IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1867 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABDUL AZIZ ABDUL GAFUR ANSARI

Versus

SUPERINTENDING ENGINEER

Appearance:

1. Special Civil Application No. 1867 of 1991

MRS DT SHAH for Petitioner No. 1

MS ARCHANA RAWAL, AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 25/02/200

ORAL JUDGEMENT

This petition is filed under Article 226/227 of the Constitution of India challenging the award passed by the Industrial Tribunal, Ahmedabad in Reference (I.T.)

No. 128/86 on 28.09.1990 whereby the Tribunal has rejected the claim put forward by the Union on behalf of the present petitioner contained in the industrial dispute referred for adjudication to the Tribunal.

2. It is the case of the petitioner that the petitioner was appointed as daily wager on 01.05.1979 as Art.I Auto Electrician and since then he was working continuously for which Dy. Executive Engineer had given certificate on 18.01.1982. The respondent No.3 had issued a circular dated 04.07.1983 for the appointment of workcharge employee who had completed five years service as a daily wager on the said post and it was provided in the said circular that daily wager appointed may be appointed as a work charge employee on the same post which was holding at the relevant time. Based on this circular, the petitioner was given appointment on 10.05.1984 as Artician Grade II. Since the petitioner was not given appointment as Electrician, a dispute was raised on behalf of the petitioner before the Industrial Tribunal contending that petitioner was eligible to be appointed as Engineer and/or workcharge Electrician and/or Art. Grade I and he was required to be paid monetary and other benefits. The said reference was rejected by the Tribunal and being aggrieved by the said award of the Tribunal, the present petition is filed.

3. Mrs. D.T. Shah, learned advocate appearing for the petitioner has submitted that the Tribunal has not appreciated that the petitioner was given workcharge auto II on account of victimisation since he was an active member of the Union. The Tribunal has misread the appointment order issued by the respondent No.1. Despite the application dated 26.07.1988 filed by the petitioner for production of certain documents from the possession of the respondents and despite the reply dated 19.08.1988 on which an endorsement was made on behalf of the petitioner to direct the respondent to file affidavit, no such order was passed by the Tribunal nor the said details were produced before the Tribunal and without any material evidence, the Tribunal has come to the conclusion that the petitioner was not possessing the requisite qualification and hence, petitioner's case could not be considered. She has further submitted that the petitioner was never in Grade III as he was appointed as daily wager on the post of Art.-I Auto Electrician and it was never contended by the respondent that the petitioner was in Grade-III and unless the petitioner was promoted to Grade II, he could not be appointed on Grade I. She has further submitted that the Tribunal has committed an error in observing that the case of the

petitioner was not based on any rules or regulations. The respondent had also not established the fact of having any rules of qualifications. The question of giving appointment on the post which petitioner was holding as a daily wager which had been done in the case of other similarly situated person and hence, discriminatory treatment was given to the petitioner. She has further submitted that the Tribunal has come to the wrong conclusion by observing that the petitioner had not produced the Certificate as required in the appointment order and, therefore, the petitioner was not qualified. It is submitted that the certificate which had been referred to in appointment order was with regard to the petitioner's educational qualification and not with regard to qualification for any post. The Tribunal has wrongly observed in the award that the petitioner had not cited any instances. The fact, however, reveals that the petitioner has specifically cited the instance of Mr. Mohmad Ali Dost who was appointed as Electrician directly on the basis of the circular. Hence, the Tribunal's award suffers from many infirmities and while rejecting the claim of the petitioner, the Tribunal has considered irrelevant aspects and ignored relevant aspects of the matter and hence, this Court should interfere in the award passed by the Tribunal.

4. Mrs. Shah has alternatively submitted that if the main contention of the petitioner is not accepted then since the petitioner has worked as Electrician all throughout, on the basis of principle of equal pay for equal work, the petitioner should be given pay scale of Electrician. This claim was also put forward by the petitioner in the statement of claim filed before the Tribunal and the same was reiterated by the petitioner in his statement. The Tribunal should have given proper direction to the respondent with regard to change and/or modification of the term of contract on the basis of the decision of this Court in the case of KALOL MUNICIPALITY & ANOTHER V/S. SHANTABEN KALIDAS AND OTHERS, 1993 (2) G.L.R. 997 wherein it is held that "an award on a reference between a Municipal Body and its employees is not binding on the State Government - The powers of an Industrial Tribunal or Labour Court to adjudicate on a dispute is not circumscribed by the incapacity of a Municipal Body to amend its Rules without the concurrence of the Government."

5. Mrs. Shah has also relied on the judgment of this Court in the case of MOHANBHAI RAMJIBHAI V/S. DY. EXECUTIVE ENGINEER, PANCHAYAT, R & B DIVISION, DHRANGADHRA, 1998 (2) G.L.H. 44 for the proposition that

when a specific issue is raised by the petitioner before the Tribunal and the same is not dealt with, to that extent, the Tribunal's order suffers from non-application of mind and on that ground, the award deserves to be quashed and set aside. She has invited my attention to para 8 of the said judgment which reads as under :-

> "Regarding Section 25-G of the Act, however, in our opinion, an error of law was committed by the Labour Court as well as by the learned Single Judge. In his substantive evidence at Exh.9, the appellant has stated that, after he was discharged from service, another person was appointed at his place by the opponent. There is no cross-examination on that point by the opponent. Thus, there was violation of provisions of Section 25-G of the Act. In our opinion, therefore, the substantive evidence of the appellant ought not to have been discarded and ignored by the authorities. An error of law was, therefore, committed by the Labour Court in passing the award without considering the relevant fact. The learned Single Judge has also committed the same error."

6. On the basis of the aforesaid submissions as well as the decision of the Tribunal, Mrs. Shah has submitted that the Tribunal's order is required to be quashed and set aside and the claim made by the petitioner in this petition should be upheld.

7. Ms. Archana Rawal, learned AGP appearing for the respondent State, on the other hand, submitted that the Tribunal has considered all relevant aspects of the matter and has given specific finding on the issue raised before it. Since the Tribunal being fact-finding authority, the High Court while considering the award passed by the Tribunal in petition under Article 227 of the Constitution of India, should not interfere in the factual finding given by the Tribunal. In the appointment order itself, it was made very clear that petitioner should produce necessary Certificates. However, the said Certificate was not produced. Moreover, in the written statement also, the respondent authority has made it clear that the petitioner did not possess the requisite qualification and hence, there was no question of granting Grade - I to the petitioner. She has further submitted that even in the appointment order, the respondent authority had committed an error while granting Grade - II to the petitioner as looking to the qualification of the petitioner, he should have been

given only Grade - III. All these aspects were considered by the Tribunal and came to the conclusion which cannot be interfered by this Court in this petition and hence, petition should be dismissed.

8. After having heard learned advocates appearing for the respective parties and after having gone through the award passed by the Tribunal, this Court is of the view that the Tribunal has dealt with each and every aspect of the matter and has given specific finding to the effect that the claim put forward by the petitioner was not based on any rules or regulations. The Tribunal has also come to the conclusion that the petitioner did not possess the requisite qualification and even there was no practice or procedure to appoint a workman from Grade III to Grade I directly. It would amount to double promotion as observed by the Tribunal. The Tribunal has also observed in the order that the petitioner has failed to quote any instance to the effect that any daily wager was straightway appointed to the Grade I post. The instance of Mr. Mohmad Ali Dost which was quoted by the petitioner was also considered by the Tribunal and it has been held that simply because the respondent has committed some irregularity that should not be repeated in all other cases. It would not create any legal right in favour of the petitioner. Even otherwise, when the petitioner's appointment was subject to production of a particular Certificate and if that Certificate was not produced in that case, the petitioner was not justified in raising any grievance. In this view of the matter, the Court is of the view that the Tribunal has come to just and proper conclusion and no interference is called for in the matter.

9. With regard to the alternative contention put forward by the petitioner of equal pay for equal work, this Court is of the view that when the petitioner was appointed in a particular grade, no direction can be given to award more pay on the basis of equal pay for equal work and hence, this plea is not found to be just and proper and is rejected.

10. As far as the directions with regard to the change or modification in the terms of the contract or the employment policy is concerned, this is not a fit case where the Court has to exercise its power and give any direction to the respondent authority.

11. Having regard to the facts and circumstances of the case and looking to the nature and scope of the power exercisable under Article 226 of the Constitution of

India, this Court does not find any merit or substance in the petition. It is, therefore, dismissed. Rule discharged without any order as to costs.

[K.A. PUJ, J.]

#Savariya#

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